



U.S. Department of Justice

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DGR:DAS:BDM/TRP
F. #2016R00467

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March 8, 2024

Via ECF

The Honorable Margo K. Brodie
Chief United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: In Re Forfeiture Order of Tim Leissner
Miscellaneous Docket No. 23-1505 (MKB)

Dear Chief Judge Brodie:

The government respectfully submits this letter to request an extension of the initial discovery period authorized by the Court in its order entered on February 9, 2024. See Memorandum & Order (the “Order”), Dkt. #32, at 9-10. As Your Honor is aware, the Court directed the parties to engage in discovery limited to the threshold question of whether Petitioner Russell Simmons held, as of the date of the filing of his third-party petition, a membership interest in Nu Horizons Investment Group, LLC sufficient to confer standing upon him to assert a derivative claim on behalf of the corporate entity. Id. For the reasons discussed below, the government, with the consent of third-party petitioners Kimora Lee Simmons-Leissner and Ken Siazon, respectfully requests an approximately sixty-day extension of the limited discovery period, from March 11, 2024 to May 17, 2024.

Since entry of the Order, the government has propounded a first set of interrogatories and requests for the production of documents on petitioner Simmons directed to the threshold issue of whether Simmons held a membership interest in Nu Horizons at the time of the filing of his petition, and petitioner Simmons has propounded his first set of requests for the production of documents upon the government and claimants Kimora Lee Simmons-Leissner, Ken Siazon and Roger Ng. In addition, the government has noticed the deposition of petitioner Simmons, and petitioner Simmons has noticed the depositions of claimant Kimora Lee Simmons-Leissner and her husband, criminal defendant Tim Leissner.

On March 1, 2024, after having received petitioner Simmons’s sixteen requests for the production of broad categories of documents, the government served its initial objections. On March 7, 2024, the government conferred with counsel for petitioner

Simmons regarding, among other things: (1) the scope of documents sought in each request; (2) the breadth of petitioner Simmons's document requests as compared to the Court's limited discovery Order; (3) how petitioner Simmons's legal theories might impact the relevance of documents requested; and (4) the government's interest in obtaining a protective order in advance of its production of any documents given the ongoing nature of its underlying criminal investigation. Based upon that discussion, the government anticipates revising its initial objections to petitioner Simmons's requests for the production of documents and preparing a proposed stipulated protective order for circulation among the parties. During the meet-and-confer, counsel for petitioner Simmons also advised that he is in the process of preparing responses to the government's first set of interrogatories and requests for the production of documents.

With respect to the depositions noticed to date, petitioner Kimora Lee Simmons-Leissner has served formal objections to her appearing for deposition. Petitioner Simmons has not formally responded to his noticed deposition. However, when conferring with the government on March 7, 2024, counsel for petitioner Russell Simmons expressed his unwillingness to produce Simmons for deposition until completion of the production of documents. Petitioner Simmons's counsel also stated that he objected to producing Simmons for a deposition during the current period of limited discovery directed to the threshold issue of Simmons's membership interest in Nu Horizons.

Based upon the above, the government respectfully submits that additional time for discovery on the threshold issue of whether Simmons's held a membership interest in Nu Horizons at the time of the filing of his petition is necessary. This extension will allow the parties to respond to the discovery requests issued to date and either resolve or seek court intervention as to anticipated discovery disputes, including with respect to the scope of documents requested and the appearance of individuals for depositions.

The government has conferred with counsel for claimants Kimora Lee Simmons-Leissner and Ken Siazon, who indicated that they consent to the requested extension of the period for limited discovery. The government also conferred with counsel for petitioner Roger Ng who advised that counsel needs additional time to contact Ng and will advise of Ng's position after speaking with him. Although neither the exchange of documents among the parties nor any depositions have yet to occur, counsel for petitioner Russell Simmons advised that Simmons objects to the requested extension.

